# SUBJECT INDEX


| | PAGE |
|---|---|
| PETITION FOR WRIT OF CERTIORARI | 1 |
| Summary Statement of the Matter Involved | 1 |
| Questions Presented | 2 |
| Statement of the Case | 3 |
| Constitutional Amendments Involved | 4 |
| Reasons for Granting the Writ | 5 |
| BRIEF IN SUPPORT OF PETITION | 9 |
| Opinion of the Court Below | 9 |
| Jurisdiction | 9 |
| Statement of the Case | 10 |
| Argument | 10 |
| Conclusion | 14 |


# LIST OF AUTHORITIES


| CASES | PAGE |
|---|---|
| Boyd v. United States, 116 U.S. 616 | 12, 13 |
| ~~Boyd~~ v. United States, 232 U.S. 383 | 11 |
| Byars v. United States, 273 U.S. 28 | 12 |
| Fowler v. United States, 62 F. 2d 656 | 12 |
| Gambino v. United States, 275 U.S. 310 | 11, 12 |
| Goldstein v. United States, 316 U.S. 114 | 10 |
| Gouled v. United States, 255 U.S. 298 | 11, 13 |
| Ingram v. United States, 113 F. 2d 966 | 10 |
| Insurance Co. v. Morse, 20 Wall. 445 | 13 |
| Kassin v. United States, 87 F. 2d 183 | 14 |
| Mackreth v. United States, 103 F. 2d 495 | 14 |
| Rent, et al., v. United States of America (not yet published), decided January 6, 1954, Fifth Circuit | 6 |
| Sutherland v. United States, 92 F. 2d 305 | 5 |
| United States v. Falcone, 311 U.S. 205 | 14 |
| United States v. Falloco, 277 F. 75 | 12 |
| United States v. Jeffers, 342 U.S. 48 | 10 |
| United States v. Lefkowitz, 285 U.S. 452 | 13 |
| United States v. Lustig, 338 U.S. 74 | 5 |
| Walder v. United States, 74 S. Ct. 35 | 6 |

Weeks v. United States, 232 U.S. 383 ..... 13
Young v. United States, 48 F. 2d 26 ..... 14

UNITED STATES CONSTITUTION

Fourth Amendment ..... 4
Fifth Amendment ..... 4

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1953

---

No._____

---

MARGUERITE ELIZABETH FREDERICKS, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*

---

## PETITION FOR WRIT OF CERTIORARI

---

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

### Summary Statement of the Matter Involved

I.

A—Petitioner prays that WRIT OF CERTIORARI issue to review judgment of the United States Court of Appeals—5th Circuit—in this matter on *December 30th*, 1953, on the ground that said decision is in conflict with decisions of other Circuit Courts involving evidence secured by State Officers jointly with the Federal Government. At the specific request of the United States Marshal, Houston, Texas, the City Police arrested Petitioner *at her residence* and searched her home, *with-*

*out search warrant*, using the fruits thereof to convict. Further, the Courts below have decided a federal question in a way which is in conflict with applicable decisions of this Court.

B—Petitioner, with three others, was indicted in the United States District Court, Southern District of Texas, on an indictment containing three counts—*conspiracy (Sec. 2557 B, 26 U.S.C.); unlawful possession (2553 A, 26 U. S. C.)*, and *receiving, concealing, (Sec. 174, 21 U. S. C.)* relevant narcotic laws *(R. 5-9)*. Before trial, Petitioner filed Motion to Suppress because no search warrant existed authorizing search of *Petitioner's residence*, in violation of the 4th and 5th Amendments. *This was overruled (R. 11-15)*.

C—Case came on for trial *without a jury* resulting in a conviction on all counts. *There was no evidence to establish conspiracy*. Petitioner was sentenced to two (2) years, and fined ($1.00) Dollar, on each count *(R. 121-122)*.

D—Appeal was taken to the United States Court of Appeals—5th Circuit *(R. 123-25)*—which affirmed the Judgment on *December 30th, 1953*, the Court holding, inter alia, Petitioner was required to either claim ownership of unreasonably seized contraband or forfeit the right to challenge the seizure *(Supp. R. 228-229)*.

## II.

## Questions Presented

A—WHETHER Federal Government participated and shared in securing evidence, without search warrant, and Petitioner's rights guaranteed by 4th and 5th Am-

endments were invaded, where evidence indisputably shows (City) Police arrested her at specific direction of United States Marshal.

B—WHETHER Courts may constitutionally require Petitioner to waive 5th Amendment rights as prerequisite to assertion of 4th Amendment protection, or vice versa, in view of judicially-created doctrines; interaction of the 4th and 5th Amendments, and the Doctrine of Unconstitutional Conditions?

C—WHETHER conviction of Conspiracy without evidence is denial of Due Process of law to Petitioner.

## III.

## Statement of the Case

The United States Marshal requested the Houston Police to go to *Petitioner's residence* and to arrest her. Four Officers went *to the residence* of Petitioner (R. 24, 38; Supp. R. 52), forced their way in (R. 26, 55-56, 109), and arrested her and her companions—two men and another woman. They searched *her residence* thoroughly (R. 29-30, 33, 36-37, 43, 46, 57, 61, 110; Supp. R. 13, 25, 27). They found a small package of heroin on the floor under the bed and two hypodermic needles in a closet. The police seized these articles, as well as a towel, a handkerchief, spoons, and a bottle containing harmless chemicals (R. 31, 34-35, 57-60, 66).

This entry, search, and seizure were effected without benefit of any warrant (R. 53-54, 60, 112; Supp. R. 16-17, 29, 63). Sufficient time and opportunity existed to obtain a search warrant if the police had sought one (R. 28-29, 32, 55-56, 62-63).

*A few hours* (R. 75) after this search Petitioner and the others were turned over to the United States Narcotics authorities, who filed charges against Petitioner—solely on the basis of the evidence seized (Sup. R. 32, 70-71).

*Motion to Suppress* declaring illegal search of her home was timely filed. *This was overruled.*

Throughout, Petitioner contended the search unreasonable and unlawful; that use of the fruits was in violation of the Fourth and Fifth Amendments.

Since no evidence establishing conspiracy was offered, she further contended the conviction constituted a denial of Due Process of law.

The Circuit Court held Petitioner, although possessing standing to challenge, was required to either surrender the protection of the Fourth Amendment or the Self-Incrimination Clause of the Fifth Amendment.

Petitioner asserts that imposition of such a choice is unconstitutional.

## IV.

## Constitutional Amendments Involved

### Amendment IV—Searches and Seizures

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

### Amendment V—Due Process

"No person * * * shall be compelled in any criminal

case to be a witness against himself, nor be deprived of life, liberty, or property, withont due process of law; * * * "

## V.

## Reasons for Granting the Writ

Real and vital matters of law concerning Federal Criminal Procedure are involved in this cause.

A clear decision by this Court on fundamental problems here is badly needed.

The decision of the Court below, is in direct conflict with the decision of the 4th Circuit Court of Appeals in SUTHERLAND v. UNITED STATES, 92 F. 2d 305, Chief Judge Parker holding:

> " * * * Where the Federal officers adopt prosecution originated by state officers as a result of a search made by them, the same rule as to the admissibility of evidence obtained in the course of the search should be applied *as if it were made by the federal officers themselves* or under their direction."

The Federal Government caused arrest of Petitioner by City Police *at her residence* where the search took place.

The decision of the Court below is believed to be erroneous and conflicting with the decision of this Court in UNITED STATES v. LUSTIG, 338 U.S. 74, stating:

> " * * * Search is a functional, not merely a physical, process. Search is not completed until effective appropriation, as part of an uninterrupted transaction, is made of illicitly obtained objects for subsequent proof of an offense. * * * "

and with the recent decision rendered *February 1, 1954*—WALDER v. UNITED STATES, 74 S. Ct. 35,—which holds that methods believed *not* to be dissimilar with those employed in the instant cause, "are outlawed * * * because they encourage the kind of society that is obnoxious to free men."

The Court below holds, conceding the arrest was made at the command of the Federal Government, the simultaneous search at her home was separable from indisputable *Federal participation and cooperation* in her apprehension.

An important issue determined by the Court below and believed to be erroneous relates to the unconstitutional requirement that Petitioner was obliged to either abandon the 4th or 5th Amendement; thus implying there was *no* merger of the 4th and 5th Amendment. This holding is believed to be in conflict with BOYD v. UNITED STATES, 116, U.S. 616, and other representative cases, which hold that both Amendments not only throw light upon each other, but *must* be interpreted with regard to the demands of the other. This was wholly disregarded and denied Petitioner.

## VI.

The decision rendered is in conflict with the recent opinion in RENT, ET AL., v. UNITED STATES OF AMERICA, (*not yet published*) decided January 6, 1954, by the 5th Circuit, and involving search and seizure and conspiracy.

Settlement of these questions by this Court is plainly in the public interest, since the legal right of every American citizen, the inviolability of law and constitution, and the common morality of the Federal Government are involved.

Resolvement of these issues by this Court is needed; other-

wise, lower courts will feel compelled to adjudicate similar issues by choosing one set of values to the exclusion of the other, leaving the law in a state of unstable equilibrium.

For the foregoing reasons, Petition for Writ of Certiorari *should be granted.*

MARGUERITE ELIZABETH FREDERICKS,

By _____

BERNARD A. GOLDING,
432 Niels Esperson Bldg.,
Houston, Texas,
*Attorney for Petitioner*

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1953

No._____

MARGUERITE ELIZABETH FREDERICKS, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*

## BRIEF IN SUPPORT OF PETITION

### I.

### Opinion of the Court Below

The opinion of the Circuit Court of Appeals appears following page 225 of the Record.

### II.

### Jurisdiction

(a) Jurisdiction of this Court is invoked under Section 1254 (7), 28 U.S.C.

(b) Judgment of the Circuit Court of Appeals was entered on *December 30th, 1953*.

(c) Petition for Rehearing was filed and denied *February 4th, 1954*.

## III.

### Statement of the Case

Full statement of the case is included in the preceding Petition of Title III.

## IV.

### Argument

WHERE UNITED STATES MARSHAL DIRECTED ARREST OF PETITIONER AND ILLEGAL SEARCH FOLLOWED ARREST, EVIDENCE SO OBTAINED VITIATES CONVICTION.

Petitioner had standing to challenge (INGRAM v. UNITED STATES, 113 F. 2d 966; GOLDSTEIN v. UNITED STATES, 316 U.S. 114; UNITED STATES v. JEFFERS, 342 U.S. 48).

The specific circumstances of this case, as well as the chain of responsibility for the illegal actions of the Police may be summarized:

(1) The United States Commissioner in Houston, Texas, ordered the United States Marshal to take Petitioner into custody;

(2) A responsible individual in the United States' Marshal's office, Houston, Texas, ordered Deputy Marshal Matthews to arrest Petitioner;

(3) Deputy Marshal Matthews, failing to make the arrest, called Lieutenant Martin, Houston Police Department, and asked assistance of the latter in making the arrest;

(4) Lieutenant Martin instructed two of his detectives and two uniformed Houston Police to make the arrest;

(5) These four officers then went and made the arrest, and at the same time perpetrated the illegal and unconstitutional search of the premises and seizure of property.

*Search was made without a search warrant, and without probable cause.*

*Both arrest and unlawful search were used to justify each other. Both were effectuated in an uninterrupted sequence and without a broken link in the chain of events.*

The evidence demonstrates that collusion, or cooperation, between State officers and Federal officers, in which one branch of the law "adopts" a case from another, has become habitual, regular and customary (R. 75, 95; Supp. R. 19, 42, 43, 44, 70, 73, 75, 80).

The Trial Judge noted that State and Federal officers "frequently cooperated", and had done so in this particular case "as they had done before" (R. 112).

This case represents what is becoming a regular custom that may involve thousands of cases in the future.

The Courts below spurned a rich legacy of Constitutional History and Experience as expressed in GAMBINO v. UNITED STATES, 275 U.S. 310; WEEKS v. UNITED STATES, 232 U.S. 383, and GOULED v. UNITED STATES, 255 U.S. 298, in approving Federal authorities knowingly receiving tainted evidence, and in making legal profit from it.

That History and Experience teaches if the Federal Government participates, either by requesting State cooperation, as in GAMBINO v. UNITED STATES, 275 U.S. 310, or by joining through its officers, as in BYARS v. UNITED STATES, 273 U.S. 28, the evidence is inadmissible unless obtained according to standards set by the Federal Constitution.

All governments punish (equally with the thief himself) the man who knowingly receives stolen goods and makes a profit of them.

In the face of such an organized, armed, and uniformed conspiracy, the rights of the private citizen crumble, and Due Process becomes a farce.

Federal and State officers, "joined hands" in obtaining contraband and aided each other in prosecuting Petitioner. The Motion to Suppress should have been granted (GAMBINO v. UNITED STATES, 275 U.S. 310; BYARS v. UNITED STATES, 273 U.S. 28; UNITED STATES v. FALLOCO, 277 F. 75; FOWLER v. UNITED STATES, 62 F. 2d 656).

COURTS MAY NOT CONSTITUTIONALLY REQUIRE PETITIONER TO WAIVE FIFTH AMENDMENT IN SEEKING PROTECTION FROM UNREASONABLE SEARCH AND SEIZURE GRANTED BY FOURTH AMENDMENT, OR VICE VERSA.

The Court below held, in effect, Petitioner was required to disprove or oblige to explain *possession* of the contraband. This, notwithstanding her Motion to Suppress and invocation of protection afforded by Fourth and Fifth Amendments.

In what appears to be a *novel situation*, the Court held, in the face of such circumstances, mere *possession of* contraband justifies conviction.

The Fourth Amendment and the Self-Incrimination Clause of the Fifth Amendment throw light upon each other (BOYD v. UNITED STATES, 116 U.S. 616),* and each

* "a case that will be remembered as long as civil liberty lives." (277 U.S. 438, 484, per Brandeis)

amendment must be interpreted with regard to the demands of the other.

The Histories of these amendments (4th and 5th) have been utilized and intermingled by the Courts since 1886 when this Court decided BOYD v. UNITED STATES, 116 U.S. 616. Confirmation that the Fifth Amendment Clause forbidding compulsory Self-Incrimination is violated by seizure of evidentiary objects was announced in GOULED v. UNITED STATES, 255 U.S. 298, and UNITED STATES v. LEFKOWITZ, 285 U.S. 452.

Courts are required to liberally construe these Amendments (WEEKS v. UNITED STATES, 232 U.S. 383).

The Doctrine of unconstitutional conditions provides additional resistance to imposition by Courts to waive one of the two Amendments. This Doctrine (INSURANCE CO. v. MORSE, 20 Wall 445) was developed by states to condition the right of "Foreign" corporations to transact business within their borders; hence; constitutional rights of living persons *a fortiori* should be free from conditional enjoyment.

The Courts should not have imposed upon Petitioner the requirement to give up rights under the Fourth Amendment in order to assert the Fifth Amendment privilege, or vice versa. Situations of custody and control of contraband may justify conviction of unlawful possession because of lack of standing to challenge the illegal search. *But that is not this case.*

It is indefensible to apply the standing doctrine so as to deny Petitioner to question this unconstitutional seizure and conviction.

CONVICTION OFFENDS DUE PROCESS OF LAW BECAUSE THERE IS NO EVIDENCE OF CONSPIRACY.

This record is completely barren of any evidence to establish existence of conspiracy.

In such matters, it is clear that this cause must be reversed on authority of UNITED STATES v. FALCONE, 311 U.S. 205; KASSIN v. UNITED STATES, 87 F. 2d 183; YOUNG v. UNITED STATES, 48 F. 2d 26, and MACKRETH v. UNITED STATES, 103 F. 2d 495; the latter being opinions of the *Fifth Circuit*.

## Conclusion

The Government urges conviction upon fruits of an illegal search. It denounces and deplores the manner in which evidence was secured, and says it *would not* do such a thing. This argument is so obviously unfair and irrational that we pretermit further mention except that the Government should *not be* allowed to deny basic liberties to Petitioner.

Liberties granted all persons are being gradually chipped away. Restrictions and limitations applied to this case negate fundamental rights which the Founding Fathers bequeathed with the hope of development. Tyranny flows easily from accumulations of petty restrictions. Suppression eases the way of authority.

Civilization is strewn with the wrecks of systems which men at one time held true; systems in the name of which liberty was denied and pain needlessly inflicted.

Power is good or evil according to the vision that it serves; not the vision of the Courts alone, nor the vision of Defendants alone, but a vision that is common to both, though not discerned with equal range of sight.

Vision, in the light of this cause, is not the right to dream or the gift to supplant established liberties but, more humbly, the best light that we possess as reflected in the document inscribed with the blood of our forebears.

Conviction was obtained in defiance of the 5th Amendment. It is somewhat like the still, sad music of Humanity. Perhaps, like Virgil (Georg. 2.246-7), we may console ourselves with the statement:

> At sapor indicium faciet, Manifestus et ora trista temptantum sensu torquebit amaro.

Rights protected by 4th and 5th Amendments may not be cavalierly dismissed as "A rule of thumb * * * ", nor integrity of the Charter of Human Rights and Freedoms sustained by substituting officers' judgment of the 'can't think without perspiring type', in place of strict adherence to constitutionally guaranteed rights."

For these reasons, this Petition for Writ of Certiorari SHOULD BE GRANTED.

Respectfully submitted,

MARGUERITE ELIZABETH FREDERICKS,

By _____

BERNARD A. GOLDING,
432 Niels Esperson Bldg.,
Houston, Texas,
*Counsel for Petitioner*

February 27, 1954